without a difference would probably be done away with, and the final result would be more satisfactory than the present practice, not the less grateful if this opinion stood and the *Kimpton Case* was overthrown.

UNCONSTITUTIONALITY OF THE SUGAR BOUNTY. — The opinion declaring the sugar bounty unconstitutional, news of which has been widely circulated in the general press, was delivered by Shepard, J., in the Court of Appeals of the District of Columbia, in *United States ex rel. the Miles Planting Co.* v. *Carlisle*, 23 Washington Law Reporter, 33, — Morris, J., concurring. Alvey, C. J., declined to express an opinion on the constitutional point. It is apparent on the most cursory examination that the opinion on the constitutional point is entirely *obiter*, for the law had been repealed, and the real case of counsel for the plaintiff was founded only on a general clause excepting vested rights. That clause the court of course held not to apply to an expectancy of a bounty or gratuity. Then the court go on to declare that the bounty to be constitutional must be for a federal public purpose, and to declare that the promotion of the sugar interest is not sufficient. The cases cited are familiar ones: *Loan Association* v. *Topeka*, 20 Wall. 655, and its well-known phrase, that a tax to pay a bounty "is none the less a robbery because it is done under the forms of law, and is called taxation," *Lowell* v. *Boston*, 111 Mass. 489, and *Cole* v. *Lagrange*, 113 U. S. 1. The other ground of the decision seems so clearly good that one wonders why the court launch a *brutum fulmen* against a repealed act, instead of letting the dead past bury its dead. The profession are indebted to Mr. Justice Shepard for a careful and scholarly consideration of the limits of taxation; but the profession must also recognize that it is a discussion *obiter*, and in no sense a decision.

POTTER *v.* THE UNITED STATES. — Mr. Asa P. Potter is to have a new trial, and lawyers will acknowledge that no other result was desirable on the case, as it came up in the Supreme Court (15 Sup. Ct. Rep. 144). Section 5208, Rev. Stat., passed in 1869, provided that no national-bank officer should certify a check unless the drawer had on deposit at the time an amount of money equal to the amount specified in the check. No penalty was imposed for a violation of this section, but in 1882 (22 Stat. 166) it was enacted that whoever should "wilfully violate" the statute of 1869 should be guilty of a misdemeanor, and should, etc. The court held that the word "wilfully" meant more than voluntarily, and that one could not wilfully violate a law if he supposed he was not violating it at all. Accordingly it is held to have been error to reject evidence of a *bona fide* agreement, by the bank officers, that a certain depositor's deficit should be treated as a loan, and that checks should be certified for him on condition that he deposited from day to day sums sufficient to cover the checks. Such an agreement, if the defendant honestly believed it lawful, would tend to negative a wilful violation of the law, although not conclusive of innocence. It was on this point that the actual decision was made, the court holding in effect that the statute required a specific intent on the defendant's part.

The indictment was held good. It alleged that the defendant wilfully certified a check by writing across the face thereof certain words. There was no allegation of delivery. Mr. Justice Brewer took it for granted

that delivery was necessary to constitute a certification; but he thought that to require an express allegation of delivery would be "too narrow" a construction of the indictment. It has generally been supposed that an indictment is bad if capable of a meaning which does not charge a crime, and that the courts will be astute to find it capable of such meaning. "Nothing shall be intended against a defendant." *United States* v. *Carll*, 105 U. S. 611; *Com.* v. *Grey*, 2 Gray, 501; *Com.* v. *Newburyport Bridge*, 9 Pick. 142; *State* v. *Brown*, 3 Murphy (N. C.), 224. As the counsel for the defence contended, everything in this indictment would be true if Potter had written on the check the words of certification, and then thrown it into the fire, instead of delivering it or causing it to be delivered. This would have been a conversion of the check, but it would not have been a certification, if the court was right in supposing delivery necessary.

Of the two points decided in the case, then, that on the indictment is against Mr. Potter, and that on the intent is the most desirable construction of an obscure statute, seldom enforced. The legal result, then, is not to be objected to.

A CARELESS ACCEPTOR. — The decision in *Scholfield* v. *Earl of Londesborough* (Court of Appeal, Dec. 19, 1894), 11 The Times Law Reports, 149, will not meet with universal assent. The facts of the case were, briefly, these: The defendant at the request of the drawer accepted a bill payable to the drawer's order for £500. The bill had been written by the drawer in such a way that space was left for inserting the figure "3" and the words "three thousand," and by so writing it the drawer was enabled subsequently to raise the amount of the bill to £3,500. Thereafter the drawer negotiated it to the plaintiff, a *bona fide* purchaser, for value without notice. The stamp was sufficient to cover the amount of the bill as raised. The court held, affirming the decision of Charles, J., 10 The Times Law Reports, 518, that the plaintiff could not recover. Charles, J., held that the facts did not show negligence on the part of the defendant. Lord Esher, who delivered an opinion with which Rigby, L. J., concurred, rested the decision of the Court of Appeal on the grounds that the defendant owed no duty to the plaintiff, and even assuming that he did, and that there had been a breach of the duty, the breach was not the cause of the plaintiff's loss, because a felonious act intervened. Lopes, L. J., delivered a vigorous dissenting opinion. Although the case may perhaps be distinguished from *Young* v. *Grote*, 4 Bing. 253, the distinction will make the earlier decision of very limited application; and, indeed, Lord Esher said of it, "That case ought not any longer to be quoted." 39 Sol. Law J. 164. In that case the opportunity for raising the check in question in the suit was afforded by a customer of the bank which paid it, and Lord Esher intimated that a customer might owe a duty to his banker, which an acceptor would not owe to the world at large. Whether Lord Esher would regard the position of the maker of a promissory note as analogous to that of an acceptor is not clear. It must be admitted that the reason for holding an acceptor, and especially an indorser, liable for the consequences of the improper form in which a bill or note is drawn or made is not so clear as the reason for holding the drawer or maker himself liable for such consequences. But the acceptor or indorser, though not in general empowered to add to or subtract from the face of a bill or note may certainly